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No. 92-1012

In the Supreme Court of the United States

OCTOBER TERM, 1992

SIMPSON PAPER (VERMONT) COMPANY, PETITIONER

v.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND SIERRA CLUB

ON PETITION FOR A WRIT OF CERTIORARI TO THE VERMONT SUPREME COURT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

Whether the Vermont Department of Environmental Conservation exceeded its authority under federal law by conditioning a water quality certification under Section 401 of the Clean Water Act, 33 U.S.C. 1341, for a federally licensed hydroelectric project on the licensee's attainment of aesthetic and recreational goals.

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This brief is submitted in response to the Court's invitation to the Solicitor General to file a brief expressing the views of the United States.

STATEMENT

Petitioner Simpson Paper (Vermont) Company challenges a condition included in a water quality certification issued by the Vermont Department of Environmental Conservation. Petitioner sought that certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341, in connection with its filing of an application with the Federal Energy Regulatory Commission for a license to operate a hydroelectric dam facility.

1. a. Section 303 of the Clean Water Act (Federal Water Pollution Control Act), 33 U.S.C. 1313, allows States to adopt "water quality standards" for all navigable waters within the State.[1] A State's water quality standards must encompass three basic elements. See 40 C.F.R. 131.6. First, they must designate the intended "use" for each water body—*e.g.*, whether it is intended for recreational uses, including swimming and fishing. 40 C.F.R. 131.6(a), 131.10. Second, the water quality standards must establish specific "criteria," which may be expressed either as numerical limitations on the presence of certain constituents in the water, or as narrative descriptions of the water quality generally necessary to support the designated use. 40 C.F.R. 131.6(c), 131.11.[2] Finally, the standards must incorporate an "antidegradation" policy designed to prevent the gradual deterioration of the quality of the water body

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[1] The Environmental Protection Agency (EPA) defines water quality standards as—

> provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.

40 C.F.R. 131.3(i).

[2] EPA's regulations define "criteria" as—

> elements of State water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.

40 C.F.R. 131.3(b).

and the resultant loss of the existing "use." 40 C.F.R. 131.6(d), 131.12.

Section 401(a) of the Clean Water Act, 33 U.S.C. 1341(a), requires any applicant for a federal license or permit for an activity that "may result in any discharge into the navigable waters," to obtain a water quality certification from the State in which the discharge will occur. The certification is intended to ensure that the activity licensed or permitted pursuant to federal law will comply with the State's water quality standards. Under Section 401(d) of the Clean Water Act, 33 U.S.C. 1341(d), the State must list in its certification any effluent and other limitations (as well as monitoring requirements) to assure that the applicant will comply with applicable effluent limitations and other standards under specified provisions of the Clean Water Act, as well as "with any other appropriate requirement of State law"; those limitations then "shall become a condition on any Federal license or permit" that is subject to Section 401.

b. The Federal Power Act, 16 U.S.C. 791a *et seq.*, authorizes the Federal Energy Regulatory Commission (FERC) to issue licenses for hydroelectric projects "necessary or convenient * * * for the development, transmission, and utilization of power across, along, from, or in any of the streams * * * over which Congress has jurisdiction." 16 U.S.C. 797(e). In issuing a license, FERC is required to impose conditions necessary to ensure that the project "will be best adapted to a comprehensive plan for improving or developing a waterway * * * for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habi-

tat), and for other beneficial public uses, including * * * recreational and other purposes." 16 U.S.C. 803(a)(1). The Act also directs FERC to "give equal consideration to the * * * protection of recreational opportunities, and the preservation of other aspects of environmental quality." 16 U.S.C. 797(e). See generally *California* v. *FERC*, 495 U.S. 490, 494-495 (1990).

2. This case involves petitioner's application to the Vermont Department of Environmental Conservation (DEC) for a certification under Section 401 of the Clean Water Act in connection with petitioner's operation of the Gilman Project on the Connecticut River.[3] The project dam, which is approximately 300 feet in length, was constructed around the turn of the century. It creates an impoundment that extends 2.9 miles upstream of the dam and that has a surface area of 130 acres. Pet. App. 6a. A license was issued for the project under the Federal Power Act in 1965, retroactive to 1941. *Gilman Paper Co.*, 33 F.P.C. 1021 (1965).[4] In September 1988, petitioner applied to FERC for a new license for the project under the Federal Power Act.[5]

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[3] The boundary between the States of Vermont and New Hampshire is set at the historic low water mark on the Vermont side of the Connecticut River. See *Vermont* v. *New Hampshire*, 289 U.S. 593, 619 (1933).

[4] The Gilman Project previously was owned by the Georgia-Pacific Corporation. After the Project was purchased by petitioner, FERC transferred the license to petitioner in 1992. See Pet. 12 n.25. References herein to "petitioner" include its predecessor, Georgia-Pacific.

[5] The original license expired in 1990. Since January 1991, petitioner has continued to operate the project, in conformity

In August 1988, in anticipation of filing its relicensing application with FERC for the Gilman Project, petitioner filed an application with the Vermont DEC for a certification under Section 401 of the Clean Water Act. DEC rendered its decision on the certification application on July 28, 1989. See Pet. App. 19a-28a. DEC first recited the findings on which its decision was based. See *id.* at 19a-26a. DEC then set forth the conditions it found necessary "[i]n certifying that there is a reasonable assurance that project activities will be conducted in a manner that will not violate applicable water quality standards" (*id.* at 26a). See *id.* at 26a-28a.

DEC was especially concerned about compliance with the State's standards for dissolved oxygen (DO) content downstream of the dam during low summer flows. See Pet. App. 21a-24a. DEC determined that operation of the project strictly on a run-of-river basis—*i.e.*, with discharges at the same rate that water enters the impoundment upstream of the dam (see Pet. 10 n.16)—would not "in and of itself assure [that state water quality] standards will be met." Pet. App. 23a. Rather, DEC found that "210 cfs [cubic feet per second] must be spilled" over the dam during the summer months to satisfy the State's DO standards. *Id.* at 23a-24a. DEC accordingly imposed a condition on its water quality certification requiring petitioner to maintain "[a] minimum instantaneous flow of 210 cfs * * * spilled at the dam during the period June 1 through October 15 to protect downstream water quality." *Id.* at 27a. In addition, in the portion of its decision reciting its findings

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with the terms of the original license, under annual licenses issued by FERC. See Jt. Br. in Opp. 3 & n.2; 16 U.S.C. 808.

(but not in its statement of conditions), DEC found that the required minimum flow "will also serve to restore to a degree the aesthetics of this river reach. This is particularly important during the high public recreational use period." *Id.* at 26a.

3. Petitioner sought judicial review of the certification in state court.[6] Petitioner argued, *inter alia*, (1) that there was not substantial evidence in the record to support DEC's imposition of the minimum-flow requirement, and (2) that DEC erred in taking into account aesthetic factors because, in petitioner's view, Section 401 does not permit a State to impose conditions on a federal license that serve only aesthetic purposes. The trial court affirmed DEC's decision. Pet. App. 5a-18a. It found substantial evidence in the record to support DEC's determination to require the minimum flow of 210 cfs from June 1 to October 15 in order to meet the criteria for DO below the dam, *id.* at 14a-15a, observing that this was the sort of "highly technical matter" on which deference to the administrative judgment is appropriate under Vermont law. *Id.* at 14a. The trial court also noted that DEC had concluded that the minimum flow "was required to safeguard the aesthetic appeal of the river to the numerous persons who use the river for recreation during the specified time period," *ibid.*, and it held that the aesthetic

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[6] We do not question the authority of a state court to review the action of a state agency in issuing the certification contemplated by Section 401 of the Clean Water Act. No questions are presented here concerning the effect to be given in subsequent proceedings before FERC to determinations by the state agency or state court on questions of federal law. See Pet. 17-18.

determination "forms a strong independent basis upon which to uphold the 210 cfs continuous spill requirement." *Ibid.*

The trial court denied petitioner's request to remand the case to DEC for consideration of an alternative method proposed by petitioner for operating the project to meet the State's DO standards; that method would have entailed continuous monitoring of downstream DO conditions during the specified times of the year and spillage of additional water only when there was a measurable DO deficit. Pet. App. 15a-17a. The court explained that petitioner had failed to avail itself of the opportunity to present its alternative plan to DEC, and that petitioner's plan, in any event, "has already been found flawed by an agency with considerable expertise in the area of hydropower management, the Federal Energy Regulatory Commission." *Id.* at 16a. The latter observation referred to the fact that FERC, in an environmental assessment dated April 4, 1990, had rejected petitioner's alternative plan of operation in favor of DEC's minimum-flow requirement. FERC found that the minimum flow requirement is "an easily gaged and monitored parameter, to meet specific future DO goals downstream of the project," while petitioner's proposed plan, "which depends on an unproven predictive water quality model, would be difficult to monitor and enforce for compliance with the goal of maintaining DO at the sag point." *Id.* at 17a (quoting Office of Hydropower Licensing, Div. of Project Review, FERC, *Environmental Assessment for Hydropower License*, Gilman Hydroelectric Project (Apr. 4, 1990)).

4. Petitioner appealed to the Vermont Supreme Court, which affirmed the trial court's judgment in

a four-page "entry order." Pet. App. 1a-4a. As relevant here, the Vermont Supreme Court first recited petitioner's arguments, and then responded with a brief description of the applicable legal framework, followed by a statement of the court's legal conclusions (*id.* at 3a-4a):

> [Petitioner] * * * contend[s] [1] that the spillage requirement was not supported by the evidence and [2] that it was beyond the DEC's authority under federal law to consider aesthetic and recreational factors as grounds for the spillage requirement.[7] The Clean Water Act allows the state to impose conditions in a § 401 certification to ensure applicant's compliance with certain criteria, including "any other appropriate requirement of State law." 33 U.S.C. 1341(d). Vermont's water quality standards promulgated in accordance with this Act require that the Connecticut River be managed for "water of a quality which consistently exhibits good aesthetic value . . . and recreation." Vermont Water Quality Standards § 3-03. The DEC spillage requirement was amply supported by the evidence. Not only were aesthetics and recreation considered relevant, ease of administration and moni-

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[7] See also Jt. Br. in Opp. App. 11a (reproducing petitioner's brief in the Vermont Supreme Court) (stating issues to be, *inter alia*, whether (1) the minimum flow requirement is "unsupported by substantial evidence in the administrative record," and (2) if the minimum flow could not be "sustained as a necessary water quality restriction," whether it was "beyond * * * [the State's] and the trial court's authority under applicable federal law to base such a spillage requirement alternatively on generalized, nonspecific considerations of 'aesthetics' and/or 'recreation' "); see generally *id.* at 44a-58a, 58a-62a.

toring were fostered by the requirement. See *In re Sherburne*, 154 Vt. 596, 607, 581 A.2d 274, 280 (1990) (added deference afforded agency determinations in highly technical fields).

DISCUSSION

Petitioner contends that the Vermont Department of Environmental Conservation erred in imposing a condition on its certification for the Gilman hydroelectric project under Section 401 of the Clean Water Act that is intended to promote aesthetic and recreational values. In petitioner's view, such a condition is entirely unrelated to water quality and is, for that reason, beyond Vermont's authority under Section 401 to impose.

The scope of a State's power under Section 401 presents issues of substantial importance to the United States, both in enforcing the Clean Water Act and in licensing and permitting of hydroelectric and other projects. Those issues might well be appropriate for consideration by this Court in a future case. This case, however, is not the proper vehicle for that purpose.

1. a. The judgment of the Vermont Supreme Court rests on an adequate and independent state ground. The Vermont DEC specifically concluded that the 210 cfs minimum-flow requirement is necessary in order "to protect downstream water quality," Pet. App. 27a—*i.e.*, to ensure compliance with the State's dissolved oxygen (DO) standards downstream of the dam during the low flow period between June 1 and October 15 of each year. See *id.* at 21a-24a. That determination was sustained by the state trial court, which found it supported by substantial evidence in the record, *id.* at 14a-15a, and then by the

Vermont Supreme Court, which concluded that "[t]he DEC spillage requirement was amply supported by the evidence." *Id.* at 3a.

In this Court, petitioner does not challenge DEC's determination that the 210 cfs minimum-flow requirement between June 1 and October 15 is necessary to assure compliance with Vermont's DO standards.[8] Because the judgment of the Vermont Supreme Court sustaining DEC's decision is fully supported by that independent DO-based ground that petitioner does not challenge, it follows that this Court is without jurisdiction to review the judgment below.

b. Petitioner does not dispute that an affirmance of DEC's decision by the Vermont Supreme Court on the ground that the minimum-flow condition was necessary to assure compliance with Vermont's DO standards would constitute an adequate and independent state ground of decision, which would bar review by this Court of any alternative holding by the Vermont Supreme Court that the minimum-flow requirement was appropriate to further purely aesthetic goals. See Pet. 17 n.37 (citing *Michigan* v. *Long*, 463 U.S. 1032, 1042 (1983), and *Coleman* v. *Thompson*, 111 S. Ct. 2546, 2556-2558 (1991)); Reply Br. 3.[9] Petitioner argues, however, that the

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[8] Nor does petitioner renew its claim that the case should have been remanded to DEC for consideration of the suitability of petitioner's management plan as an alternative to the minimum-flow requirement for assuring compliance with the State's DO standards.

[9] Because petitioner apparently concedes that an affirmance by the Vermont Supreme Court of DEC's decision on the DO rationale would constitute an adequate and independent *state* ground—and because petitioner does not in any event

Vermont Supreme Court's judgment does not actually rest on that alternative ground; as petitioner reads the decision below, the Vermont Supreme Court did not resolve the DO issue, but instead rested its decision entirely on DEC's determination that the minimum-flow requirement was justified on aesthetic grounds. See Pet. 17; Reply Br. 3. We disagree.

In *Michigan* v. *Long*, this Court announced a general rule that when "a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, [the Court] will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so." 463 U.S. at 1040-1041; see also *Coleman* v. *Thompson*, 111 S. Ct. at 2555-2559. As we explain below, from our review of the decisions and petitioner's arguments in the lower courts, we believe it is clear under *Michigan* v. *Long* and *Coleman* v. *Thompson* that the Vermont Supreme Court's judgment is fully supported by an adequate and independent state ground.

DEC justified the minimum-flow condition primarily on the basis that it is necessary to assure

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seek review of the Vermont Supreme Court's judgment to the extent it rests on the DO ground—there is no occasion in this case to consider whether a state court's affirmance of a state agency's imposition of a condition on a certification under Section 401 of the Clean Water Act might in some circumstances present a question of federal law that is subject to review in this Court under 28 U.S.C. 1257 and Article III of the United States Constitution. Cf. *Arkansas* v. *Oklahoma*, 112 S. Ct. 1046 (1992).

compliance with the State's DO standards downstream of the dam. DEC devoted the bulk of its discussion to the DO problem (see Pet. App. 21a-24a), and the need to safeguard against a DO deficit was the *only* basis cited by DEC in the portion of its decision that actually imposed conditions (including the minimum-flow condition) on the certification. See *id.* at 27a (prescribing minimum-flow condition "to protect downstream water quality"). The sole reference to "aesthetics" was in two sentences of DEC's antecedent statement of its findings. There, DEC found that the minimum-flow condition "will also serve to restore to a degree the aesthetics of this river reach," which is "particularly important during the high public recreational use period." *Id.* at 26a.

Similarly, the state trial court devoted the bulk of its discussion of the minimum-flow condition to the DO justification announced by DEC and the evidence in the record supporting it. See Pet. App. 7a-12a. The trial court affirmed that ruling, and then stated that DEC's aesthetic determination formed an "independent basis" for DEC's decision. *Id.* at 14a.

Finally, on appeal to the Vermont Supreme Court, petitioner devoted the principal portion of its challenge to DEC's decision on the merits to the DO basis on which DEC relied. Petitioner argued that, under state-law principles governing judicial review of agency action, DEC's decision on that point was not supported by the evidence in the record. See Jt. Br. in Opp. App. 44a-58a. Petitioner further argued that "[i]f" the minimum-flow requirement could not be sustained as a necessary water quality condition to assure compliance with DO standards, it was beyond

DEC's authority to impose for "aesthetic" or "recreation" reasons. *Id.* at 11a; see *id.* at 58a-62a. In our view, the Vermont Supreme Court's decision unquestionably rejects *both* of these arguments.

The one paragraph of the Vermont Supreme Court's opinion that is relevant for present purposes consists of five sentences. See Pet. App. 3a-4a (quoted at pages 8-9, *supra*). The first sentence identifies petitioner's two arguments, just discussed. The next two sentences set forth the applicable legal framework for addressing those two arguments; the second sentence describes Section 401 of the federal Clean Water Act, and the third sentence describes Vermont's water quality standards promulgated in accordance with the Clean Water Act. The fourth sentence then rejects petitioner's challenge to the minimum-flow requirement insofar as it rests on the need to assure compliance with the State's DO standards, concluding that "[t]he DEC spillage requirement is amply supported by the evidence." Pet. App. 3a. The final sentence responds to petitioner's alternative argument, explaining that "[n]ot only were aesthetics and recreation considered relevant," but also that "ease of administration and monitoring were fostered by the requirement." *Ibid.*[10]

The Vermont Supreme Court thus affirmed both of what the trial court regarded (Pet. App. 14a) as

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[10] The Vermont Supreme Court's reference to "ease of administration and monitoring" presumably was to the trial court's adoption of FERC's determination, in rejecting petitioner's proposed management plan, that the minimum-flow requirement is an "easily gaged and monitored parameter, to meet specific future DO goals downstream of the project." Pet. App. 16a-17a.

"independent" bases for DEC's decision.[11] Because petitioner seeks review only on the latter ground—and because the former ground appears to rest entirely on state law (see page 12 and note 9, *supra*; Jt. Br. in Opp. App. 44a-58a)— the judgment of the Vermont Supreme Court is fully supported by, and therefore rests on, adequate and independent state grounds. As such, it is beyond the jurisdiction of this Court to review.

2. Even if we assume, *arguendo*, that this Court has jurisdiction to review the Vermont Supreme Court's judgment, this case would not, in our view, present an appropriate occasion on which to consider whether (and, if so, in what manner) a state agency may consider "aesthetic" factors in imposing conditions on a certification under Section 401 of the Clean Water Act. At the very least, DEC's certification decision makes clear that, in DEC's view, the minimum-flow condition was fully justified by the need

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[11] Petitioner errs in contending (Reply Br. 3) that the Vermont Supreme Court "never expressly addressed the DO issue." To be sure, the court did not use the term "DO" or "dissolved oxygen." But it is clear from the structure of the court's opinion and the way in which petitioner briefed the case that the court's holding (in the fourth sentence of the relevant paragraph) that "[t]he DEC spillage requirement was amply supported by the evidence" responded to petitioner's argument in its brief that the record did not support the DO basis for the condition. See Jt. Br. in Opp. App. 44a-58a. Moreover, the first sentence of the relevant paragraph in the court's opinion, in which the court identified petitioner's two contentions on the merits, makes clear that this DO/evidence-in-the-record issue was distinct from the basically legal, rather than evidentiary, issue of whether Section 401 of the Clean Water Act permitted DEC to consider aesthetic and recreational factors in imposing the minimum-flow condition.

to assure compliance with Vermont's DO standards, and the courts below sustained that reasoning. Accordingly, even if this Court were to grant review in this case and hold that a State may not consider "aesthetic" factors unrelated to measurable water quality criteria, both the DEC decision and the Vermont Supreme Court's judgment affirming it would be unaffected. As a result, the judgment below would have to be regarded for present purposes as correct. Because this Court "reviews judgments, not statements in opinions," *Black* v. *Cutter Laboratories*, 351 U.S. 292, 297 (1956), the view expressed in the opinion below regarding the relevance of aesthetic factors does not warrant certiorari in this case.

There are still further reasons why that issue is not suitably presented for review in this case. First, it is not clear precisely what DEC meant by its reference to "the aesthetics of this river reach." Pet. App. 26a.[12] DEC might have had in mind the need to preserve a certain minimum level of water in the river so that the scenic vista of the river would be pleasing. Alternatively, DEC might have had in mind aesthetics related to the quality of the water itself—*e.g.*, the odor that could be emitted if the DO content of the water was reduced to a level that would lead to releases of hydrogen sulfide, which are associated with low levels of dissolved oxygen. This Court should not consider the difficult and potentially fact-dependent questions concerning the relevance of aesthetic factors in the issuance of a state certifica-

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[12] Like respondents (Jt. Br. in Opp. 10), we believe this reference, on its face, focuses on (or at least includes) downstream aesthetics, not merely aesthetics in viewing the dam itself, as petitioner suggests (see Pet. 15, 17-18, 23-24).

tion under Section 401 in the absence of a clear explication by the state agency and state courts of the basis for the challenged certification condition.[13]

Second, the minimum-flow requirement that petitioner challenges in this case has received a preliminary endorsement by FERC. In rejecting petitioner's request for a remand to DEC for consideration of its alternative management plan, the trial court referred to the conclusion in FERC's environmental assessment that the minimum-flow requirement could be "easily gaged and monitored," while petitioner's alternative plan, "which depends on an unproven predictive water quality model, would be difficult to monitor and enforce for compliance with the goal of maintaining DO." Pet. App. 16a, 17a. The trial court then adopted FERC's opinion as its own, stating (*id.* at 17a):

> The court sees no reason to doubt FERC's expertise in this area, finds its conclusions to be supportable, and accepts as fact FERC's negative scientific assessment of [petitioner's] proposal.

Thus, in the context of this case, petitioner cannot credibly claim that the DEC's imposition of the minimum-flow condition presents any ripe conflict with federal law or with actions taken by FERC in its administration of federal law.[14]

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[13] We likewise are reluctant to express a view on those questions in the highly abstract context of this case.

[14] Petitioner contends (Pet. 25-29) that the Vermont Supreme Court's "expansive" view of a State's authority under Section 401 would allow States to circumvent the primacy of the federal licensing scheme set forth in the Federal Power Act, 16 U.S.C. 791a *et seq.*, and recently reaffirmed in *California* v. *FERC*, 495 U.S. 490 (1990). As respondents point

For the foregoing reasons, review is not warranted in this case.[15]

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out (Jt. Br. in Opp. 20-21), however, petitioner did not make an argument based on the Federal Power Act in the Vermont Supreme Court, and that court did not discuss the Federal Power Act. That Act therefore does not furnish an independent basis for review in this case. Of course, if the Court were to grant review, it nonetheless would be relevant to consider the interaction of Section 401 and the statutory provisions governing FERC's licensing authority.

[15] On June 1, 1993, a petition for a writ of certiorari was filed seeking review of the decision of the Washington Supreme Court in *Washington Dep't of Ecology* v. *PUD No. 1 of Jefferson County*, 849 P.2d 646 (Wash. 1993). See *PUD No. 1 of Jefferson County & City of Tacoma* v. *Washington Dep't of Ecology*, petition for cert. pending, No. 92-1911. The Washington Supreme Court in that case addressed many of the issues petitioner attempts to raise in this case, including the interaction of Section 401 of the Clean Water Act and FERC's licensing authority under the Federal Power Act and *California* v. *FERC*. See 849 P.2d at 653-657. The Washington Supreme Court also considered the scope of the reference in Section 401(d) of the Clean Water Act, 33 U.S.C. 1341(d), to "any other appropriate requirement of State law" (see 849 P.2d at 651-653), an issue that is not involved in this case. No response has yet been filed to the certiorari petition in No. 92-1911, and we express no view at this time on whether the Court should grant review in that case.

In *Summit Hydropower* v. *Commissioner of Environmental Protection*, No. CV91-050-26-43 (Conn. Super. Ct. July 20, 1992), appeals pending, Nos. SC12618 & 14619 (Conn. argued May 4, 1993), the state agency also conditioned its certification under Section 401 on a minimum-flow requirement. Unlike the condition at issue in this case, however, the minimum-flow requirement in *Summit Hydropower* was imposed solely for aesthetic purposes; Connecticut conceded that the project would otherwise meet water quality requirements. A case raising similar issues is also pending before the New York Court of Appeals. See *Niagara Mohawk*

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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